

## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 DANIEL RODRIGUEZ,

No. C 06-3416 MMC

12 Plaintiff,

**ORDER DISMISSING COMPLAINT  
WITHOUT LEAVE TO AMEND;  
DENYING APPLICATION TO PROCEED  
IN FORMA PAUPERIS**

13 v.

14 DR. RANDOLL GO, et al.

15 Defendants.  
\_\_\_\_\_  
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17 Before the Court is plaintiff Daniel Rodriguez's complaint and application to proceed  
18 in forma pauperis, both filed May 25, 2006. When a party seeks to proceed in forma  
19 pauperis, the district court is required to dismiss the case if the court determines that the  
20 plaintiff fails to state a claim upon which relief can be granted. See 28 U.S.C.  
21 § 1915(e)(2)(B)(ii).

22 A complaint must contain a "short and plain statement of the grounds upon which  
23 the court's jurisdiction depends." See Fed. R. Civ. Proc. 8(a)(1). Plaintiff's complaint fails  
24 to comply with this requirement.

25 Plaintiff's sole allegation is that defendants committed malpractice when they failed  
26 to correctly diagnose and treat his glaucoma, causing him to suffer irreparable harm.  
27 "[M]edical malpractice claims do not present a federal question." Olsen v. Quality  
28 Continuum Hospice, Inc., 380 F. Supp. 2d 1225, 1231 (D. N.M. 2004) (citing cases).

1 Consequently, this Court lacks federal question jurisdiction over plaintiff's claim. See id.

2 No other basis for jurisdiction is present. Plaintiff alleges he resides in California and  
3 that both defendants have California addresses. Consequently, diversity of citizenship is  
4 lacking. Cf. 28 U.S.C. § 1332(a)(1) (providing district court has jurisdiction over action  
5 between citizens of different states, where claim exceeds \$75,000).

6 Accordingly, plaintiff's complaint is hereby DISMISSED without leave to amend and  
7 without prejudice to plaintiff's filing his claim in state court. In light of the dismissal,  
8 plaintiff's application to proceed in forma pauperis is DENIED as moot.

9 **IT IS SO ORDERED.**

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11 Dated: June 13, 2006

  
MAXINE M. CHESNEY  
United States District Judge

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